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No. 85-1520

In the Supreme Court of the United States

OCTOBER TERM, 1986

RUSSELL ANDERSON, PETITIONER

v.

ROBERT E. CREIGHTON, JR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether a law enforcement officer's immunity from monetary liability under *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), may be defeated by a showing that the general legal standard governing the officer's conduct was clearly established at the time of the relevant events, or whether the officer's immunity may only be overcome if he reasonably should have known that his particular conduct violated the applicable constitutional standard.

PARTIES TO THE PROCEEDING

The petitioner is Russell Anderson, a special agent of the Federal Bureau of Investigation. The respondents are Robert E. Creighton, Jr., and Sarisse Creighton, the plaintiffs in this case, who brought suit on their own behalf and on behalf of their children, Shaunda Creighton and Tiffany Creighton.

The City of St. Paul and St. Paul police officers John J. DeNoma, Kevin T. Daniels, Robert C. Ashton, John J. Gelao, William A. Snyder, and Jerome P. Stephan were defendants in the district court, but their cases were remanded to state court and they did not appear in the court of appeals.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 766 F.2d 1269. The opinion of the district court (Pet. App. 18a-26a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 12, 1985. A petition for rehearing was denied on October 15, 1985 (Pet. App. 27a). On January 4, 1986, Justice Blackmun extended the time for filing a petition for a writ of certiorari to and including

March 14, 1986. The petition was filed on that date and was granted on June 30, 1986. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATEMENT

1. At approximately 3:30 p.m. on November 11, 1983, the Minnesota Federal Savings and Loan in St. Paul, Minnesota, was robbed by a man holding a gun. Petitioner, a special agent of the Federal Bureau of Investigation (FBI), was informed of the robbery and arrived at the bank at approximately 4:30 p.m. to begin his investigation. Together with two other FBI agents and several officers of the St. Louis Police Department, petitioner interviewed eyewitnesses to the robbery and gathered other evidence. Petitioner obtained a description of the robber from the bank tellers and learned from others in the neighborhood that the robber had used a getaway car that was burgundy or maroon and silver, or possibly a darker color, and that the car might have been a Buick. Pet. App. 19a; J.A. 17-18.

Petitioner stated in an affidavit filed in this action that "[b]y 6:30 p.m. * * * [he] began to suspect that the robber was Vadaain David Dixon" (J.A. 18). He based his conclusion on several factors. First, the description of the bank robber supplied by the tellers "was identical to Dixon's height, weight, build, race, hair and complexion" (*ibid.*). Second, Dixon had a history of committing armed bank robberies. Earlier in the same year, Dixon had been indicted by a federal grand jury for crimes related to seven bank robberies; Dixon subsequently pleaded guilty to four of these robberies, two of which took place in the Minneapolis-St. Paul area. Dixon admitted that he had used a handgun in some of the

bank robberies. Pet. App. 19a-20a; J.A. 18. Third, petitioner knew that Dixon was "at large and a federal fugitive" (J.A. 19). Following his guilty plea in connection with the bank robbery charges, Dixon had been released on bond pending the completion of the presentence investigation. As a condition of his release Dixon was required to reside at a Volunteers of America residence, but was permitted to leave the residence on daily furloughs. He had failed to return from his furlough on November 9, 1983, two days prior to the bank robbery, and a warrant for his arrest had been issued. Petitioner was aware of all of this information because he had conducted the investigation of the other bank robberies committed by Dixon. Pet. App. 19a-20a; J.A. 18-19.

Petitioner left the bank at approximately 6:30 p.m. to prepare a photographic display of potential suspects to show to the bank tellers who had seen the robber. Between 7:30 p.m. and 8:00 p.m. each of the two tellers independently identified Dixon as the bank robber by selecting his photograph from a 12-photo display. Pet. App. 20a; J.A. 19.[1]

Petitioner next met with officers of the St. Paul Police Department and concluded that "[b]ecause of Vadaain Dixon's propensity for violence" he should be arrested "as swiftly as possible" (J.A. 20). In addition to his knowledge of Dixon's history of armed bank robberies, petitioner knew that Dixon had participated in a 1979 liquor store robbery in which an accomplice pistol-whipped the store's employees and customers and took a hostage at gunpoint. Dixon himself almost ran over a police officer in an attempt

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[1] Several days later, an accomplice to the robbery was arrested and gave a statement naming Vadaain Dixon as the bank robber. Pet. App. 19a n.1; J.A. 18.

to escape from the scene of that crime. And, of course, a gun had been used in the bank robbery that was under investigation. Pet. App. 20a; J.A. 19-20.

Petitioner and the police officers proceeded to the home of Dixon's mother, Iris Dixon. Her house was close to the police station and the bank, and the officers knew that Dixon's brother, James Dixon—who had helped petitioner escape after an earlier bank robbery—was staying with his mother. Pet. App. 20a & n.2; J.A. 20. The officers searched the house, but did not find Vadaain Dixon.[2] James Dixon supplied the officers with the addresses of his grandmother and other siblings and told the officers that his sister and brother-in-law, respondents Sarisse Creighton and Robert E. Creighton, Jr., owned a red or burgundy Oldsmobile. Pet. App. 20a; J.A. 20-21.

Petitioner believed that Cheryl Ann Donlin Dixon, Vadaain Dixon's wife, was residing with the Creightons. Cheryl Dixon previously had admitted that she drove the getaway car in two of the bank robberies committed by Vadaain Dixon. She had been arrested in connection with those robberies and released on bond pending her trial. The probation officer conducting the presentence investigation of Vadaain Dixon had informed petitioner that Cheryl Dixon stated that she was living with respondents and sometimes used respondents' automobile to pick up Vadaain Dixon at the Volunteers of America residence. The probation officer further reported that Vadaain Dixon confirmed that his wife was living at respondents' home. Pet. App. 19a, 20a-21a; J.A. 18, 21, 38-39. Either just be-

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[2] Petitioner stated in his affidavit that Iris Dixon and James Dixon consented to the search of the house (J.A. 20); Iris Dixon did not indicate in her affidavit whether she consented to the search (see J.A. 53-54).

fore or immediately after his conversation with James Dixon, petitioner confirmed by computer the fact that respondents owned a burgundy or maroon Oldsmobile, an automobile that resembled the getaway car described by witnesses to the bank robbery. Pet. App. 21a; J.A. 21.

The officers next stopped at the home of Minnie Dixon, Vadaain Dixon's grandmother, which was located on the route between Iris Dixon's house and respondents' house. Minnie Dixon consented to a search of her home; the officers again did not find Vadaain Dixon. Pet. App. 21a; J.A. 21.

Petitioner and the police officers arrived at respondents' home at 8:40 p.m. Robert Creighton did not consent to a search of his home, but the officers nonetheless entered and searched for Vadaain Dixon. Pet. App. 21a; J.A. 21-22, 43-44. Some of what transpired during that search is in dispute, but several facts are uncontested.[3] During the course of the search, Sarisse Creighton and her children became quite distraught (Pet. App. 2a-4a, 21a). Robert Creighton was struck and injured by a St. Paul policeman, arrested for obstructing legal process, and released the following day without being charged with an offense (*id.* at 3a-4a, 22a). Petitioner had nothing to do with the incident in which Robert Creighton was injured (*id.* at 22a, 24a n.4).[4] And neither Vadaain Dixon nor Cheryl Dixon was found at respondents' home.

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[3] Compare J.A. 22-23 (affidavit of Russell Anderson) with J.A. 44-45 (affidavit of Robert Creighton, Jr.); J.A. 55-56 (affidavit of Iris Dixon); J.A. 47-48 (affidavit of Sarisse Creighton).

[4] According to petitioner, Robert Creighton provoked a St. Paul police officer by attempting to grab his weapon (J.A. 22-23). According to Robert Creighton, the police officer's

2. Respondents subsequently commenced this action in Minnesota state court against petitioner and other defendants alleging that the officers' warrantless entry into respondents' home violated the Fourth Amendment.[5] Respondents sought damages under *Bivens* v. *Six Unknown Named Agents*, 403 U.S. 388 (1971); 42 U.S.C. 1983 and 1985; and state tort law. J.A. 3-15. Petitioner removed the action to federal district court and moved for summary judgment on the ground that he was entitled to immunity from liability for damages under *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982). Petitioner contended that his warrantless entry into respondents' home did not violate respondents' clearly established constitutional rights because the relevant case law did not indicate that his conduct was unconstitutional.

The district court granted summary judgment in favor of petitioner, holding that petitioner's conduct did not violate the Fourth Amendment (Pet. App. 18a-26a). The court found that petitioner's suspicion that Vadaain Dixon had committed the bank robbery was "reasonable and justified in light of the description of the robbery given by witnesses, Dixon's past robberies and his recent fugitive status, and the selection of Dixon's photo from a photo lineup by the two tellers" (*id.* at 23a).

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assault was unprovoked (J.A. 44). Since the question before this Court involves only petitioner's entitlement to immunity, and the district court found that respondents failed to come forward with any facts establishing a conspiracy between petitioner and the St. Paul police officers (Pet. App. 26a), the facts concerning the conduct of the local police officers are irrelevant here.

[5] In addition to petitioner, the complaint named as defendants the City of St. Paul, several identified St. Paul police officers, and several unidentified FBI agents (J.A. 4-5).

The court further concluded that petitioner had probable cause to believe that Dixon was at respondents' home. It noted that Vadaain Dixon's probation officer informed petitioner that he had learned from both Vadaain Dixon and Cheryl Dixon that Cheryl Dixon was living with respondents and using their automobile; that petitioner was aware that Cheryl Dixon previously had been arrested for acting as Vadaain Dixon's accomplice; and that respondents' automobile resembled the description of the car used in the bank robbery (Pet. App. 23a).

The district court also found that "exigent circumstances existed to justify [petitioner's] search at [respondents'] residence without a warrant" (Pet. App. 23a). The court applied the six-factor test originated in *Dorman* v. *United States*, 435 F.2d 385 (D.C. Cir. 1970) (en banc), and approved by the Eighth Circuit in *United States* v. *Kulcsar*, 586 F.2d 1283 (1978). It stated (Pet. App. 24a & n.4) that (1) "[a] grave offense was involved here, armed robbery"; (2) "the suspect was reasonably considered to be armed and dangerous based on his past record and fugitive status"; (3) petitioner had probable cause to believe that Vadaain Dixon committed the bank robbery; (4 petitioner had probable cause to believe that Vadaair Dixon was located at respondents' residence; (5) "[t]here was a likelihood that Vadaain Dixon would escape if not swiftly apprehended in that he had just jumped bond, had a vehicle, and money from the robbery to finance his flight"; and (6) "[t]he initial entry into [respondents'] home was peaceful," and the alleged violent acts—in which petitioner was not alleged to have been involved—did not occur until after the officers' entry. The court also noted that the warrantless entry was justified by peti-

tioner's reasonable need to prevent the destruction of evidence and by the fact that petitioner was in "hot pursuit" of Vadaain Dixon (*id.* at 24a-25a).

The court observed that its determinations were not affected by respondents' offer to prove certain facts through discovery because "the four facts listed in the offer of proof [presented] no barrier to summary judgment here" (Pet. App. 25a n.5).[6] Since petitioner's conduct did not violate the Fourth Amendment, the district court concluded that he was entitled to immunity from damages liability.[7]

3. The court of appeals reversed and remanded the action for trial (Pet. App. 1a-17a). It found that "[t]he record reveals numerous unresolved factual controversies on the issues of probable cause and exigent circumstances which should be resolved by

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[6] Respondents offered to prove that a newspaper reported that the FBI had stated that a car was not observed leaving the scene of the bank robbery, that the FBI had provided the newspaper with a description of the bank robber different from the description contained in petitioner's affidavit, that police officers had asked one of respondents' neighbors whether he had seen a car with license plates of a color different from those on respondents' car, and that the FBI did not search the home of Cheryl Dixon's father. Pet. App. 9a, 25a n.5.

[7] The district court further concluded that summary judgment was appropriate on respondents' claim against petitioner under 42 U.S.C. 1983 because "Section 1983 requires that the defendant acted under color of state law" but petitioner "was a federal officer acting under federal law. [Respondents] failed to allege any conspiracy to tie [petitioner] in with the non-federal officials, and no facts have been advanced to support such an allegation" (Pet. App. 26a). The court rejected respondents' claim under 42 U.S.C. 1985 because they "failed to allege the requisite class-based animus" (Pet. App. 26a). Finally, the district court remanded the claims against the remaining defendants to state court (*ibid.*).

the jury after [respondents] have been given the opportunity for reasonable discovery" (*id.* at 7a (footnote omitted)). With respect to probable cause, the court found that there was an issue of fact "as to whether [respondents'] automobile matched the description of the car used in the robbery" (*id.* at 9a). The court stated that the description of the getaway car was ambiguous and noted that respondent had sought discovery in order to establish that the police were not sure of the description of the automobile (*id.* at 8a-10a).

The court further concluded that petitioner could not rely upon the information concerning Cheryl Dixon's whereabouts to establish probable cause because (1) other evidence in the record indicated that Cheryl Dixon was not living with respondents (Pet. App. 11a), (2) petitioner's information concerning Cheryl Dixon was "unreliable double hearsay" (*ibid.*), and (3) petitioner's information did not show that Cheryl Dixon was living with respondents after November 1 (*id.* at 12a).

The court of appeals also rejected the district court's conclusion that exigent circumstances justified petitioner's warrantless entry into respondents' home. It found the "hot pursuit" exception to the warrant requirement inapplicable because "no evidence in the record supports a claim that [petitioner] was in 'immediate or continuous pursuit' of Vadaain Dixon or that [petitioner] was involved in 'some sort of chase' " (Pet. App. 13a (citations omitted)). The court of appeals concluded that the warrantless entry was not justified by a fear of destruction of evidence because petitioner's affidavit did not reveal any concern that evidence might be destroyed. Finally, the court found that summary judgment regarding the

existence of exigent circumstances under the *Dorman* test was precluded by factual disputes relating to the likelihood that Vadaain Dixon was present in respondents' home, the possibility that Dixon might escape in the time necessary to obtain a warrant, and whether petitioner's entry into the home was peaceable. Pet. App. 13a-15a.

The court of appeals next briefly addressed petitioner's entitlement to qualified immunity. The court explained that " 'if the law was clearly established, the immunity defense ordinarily should fail since a reasonably competent public official should know the law governing his conduct' " (Pet. App. 16a (quoting *Harlow*, 457 U.S. at 818-819)). Then, adverting to its earlier discussion regarding the lawfulness of petitioner's actions, the court stated that "[respondents'] fourth amendment rights and the 'exigent circumstances' doctrine were 'clearly established' " at the time of petitioner's entry into respondents' home (Pet. App. 16a) and that "[petitioner] has cited no persuasive reason why he could reasonably have been unaware of this clearly established law" (*id.* at 17a). Accordingly, without undertaking to decide whether petitioner's own actions were clearly unlawful under well-established law, the court of appeals held that petitioner was not entitled to qualified immunity.

SUMMARY OF ARGUMENT

In *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), this Court concluded that a government official may not be held liable in damages for his unconstitutional conduct unless the official violates "clearly established statutory or constitutional rights of which a reasonable person would have known" (457 U.S. at 818). The question in this case is whether an official should

lose the immunity conferred under *Harlow* simply because the general legal principle defining the plaintiff's constitutional rights was "clearly established" at the time of the conduct in question.

It is well settled that a government official may be deprived of his immunity from damages liability only if he should have known, on the basis of the relevant case and statutory law, that the challenged conduct violated the Constitution. *Harlow* itself framed the inquiry as whether the official violated clearly established "constitutional rights," not whether his conduct was governed by a settled legal principle, and emphasized that immunity is available so long as the official's conduct is objectively reasonable. The Court reaffirmed last Term in *Malley* v. *Briggs*, No. 84-1586 Mar. 5, 1986), that an immunity defense may be defeated only if "a reasonably well-trained [official] in [the defendant's] position would have known" that his conduct violated the Constitution (slip op. 9).

A plaintiff might, in some circumstances, be able to overcome an official's immunity defense simply by showing that a settled legal principle governed the official's conduct. If the legal principle established a bright-line rule sufficient to inform a reasonable official that his particular conduct violated the Constitution, immunity would not be appropriate. But many, if not most, legal standards do not establish such bright-line rules. They instead prescribe general principles, with the lawfulness of an official's conduct in a particular case depending upon the specific facts of that case. This sort of general legal principle—standing alone—would not in any way enable a government official to determine whether his conduct was permitted under the Constitution. The existence of such a general principle of law, therefore, cannot deprive

a government official of his immunity. The official's entitlement to immunity instead depends upon whether a reasonable official, reviewing the cases in which the legal principle had been applied, would have known that the challenged conduct violated the plaintiff's constitutional rights.

The court of appeals' contrary view—that immunity should be withdrawn if the relevant legal standard was clearly established at the time of the challenged conduct—would drastically reduce the protection from immunity afforded to government officials; the implications of that rule are especially dramatic with respect to the immunity afforded to law enforcement officers. Many of the day-to-day duties of law enforcement officers are governed by settled, but extremely general, Fourth Amendment principles such as, for example, the "reasonable suspicion" standard applicable to investigatory stops, the "probable cause" standard applicable to searches and arrests, and the "exigent circumstances" standard applicable to warrantless entries into an individual's home.

Under the rule adopted by the court of appeals, the existence of such general standards would eliminate immunity for law enforcement officers in almost every lawsuit seeking damages for a violation of the Fourth Amendment. The officer would be held to a standard of perfection; if he incorrectly predicted the manner in which a court later resolved some complex Fourth Amendment question, he would be subject to monetary liability on the ground that the general legal principle governing that question was clearly established. This Court should reject the unjustified limitation upon official immunity imposed by the court below and reaffirm that a law enforcement officer's entitlement to immunity depends solely

upon whether the officer reasonably should have known that his particular conduct violated the Constitution.

ARGUMENT

THE COURT OF APPEALS ERRONEOUSLY DEPRIVED PETITIONER OF HIS IMMUNITY DEFENSE

In *Bivens* v. *Six Unknown Named Agents*, 403 U.S. 388 (1971), this Court held that an individual may in some circumstances recover money damages from a federal law enforcement officer for injuries that he suffers as a result of the officer's violation of his Fourth Amendment rights. The Court in *Bivens* reserved the question whether a law enforcement officer might be "immune from liability by virtue of [his] official position" (403 U.S. at 397), but the Court's subsequent decisions have made clear that law enforcement officers "generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982); see also *Malley* v. *Briggs*, No. 84-1586 (Mar. 5, 1986), slip op. 5, 7-9; *Mitchell* v. *Forsyth*, No. 84-335 (June 19, 1985), slip op. 18. The standard turns upon the "objective reasonableness of [the] official's conduct": a law enforcement officer is entitled to immunity unless he could "fairly be said to 'know' that the law forbade [his] conduct" (*Harlow*, 457 U.S. at 818).

A government official's immunity defense frequently may be upheld on the ground that the general legal principle defining the constitutional right asserted by the plaintiff was not "clearly established" at the time of the alleged infringement of that right by the government official. For example, in *Mitchell* v.

Forsyth, supra, the plaintiff claimed that former Attorney General Mitchell violated his Fourth Amendment rights by authorizing a warrantless wiretap designed to gather information regarding a domestic threat to national security. This Court analyzed the case law relating to the constitutionality of such wiretaps and concluded that "[t]he legality of the warrantless domestic security wiretap Mitchell authorized in November 1970 was, at that time, an open question" (slip op. 23). Since it could not be said that former Attorney General Mitchell should reasonably have known that his conduct violated the Constitution, he was entitled to immunity from damages liability under the standard announced in *Harlow*.

The question presented in this case is whether a government official automatically loses his immunity defense if his conduct was governed by a settled legal standard at the time that the alleged unconstitutional action occurred. The court below concluded that petitioner could be held liable in damages because settled legal principles established that a warrantless entry into an individual's home violated the Fourth Amendment unless the entry was justified by probable cause and exigent circumstances. We submit that the proper inquiry under *Harlow* is not whether the general legal standard defining the plaintiff's constitutional right was clearly established, but whether the defendant should have known that the particular conduct challenged by the plaintiff violated the Constitution. Although the existence of a settled legal standard is relevant to this inquiry, it frequently will not be dispositive. The court of appeals therefore erred in depriving petitioner of his immunity defense solely because the general legal principles governing petitioner's conduct were clearly established at the time of the warrantless entry into respondents' home.

A. A Government Official Is Entitled To Immunity From Damages Liability Unless He Reasonably Should Have Known At The Time Of The Relevant Events That His Particular Conduct Violated The Constitution

1. A review of this Court's decisions interpreting the qualified immunity standard announced in *Harlow* makes clear that the Court never has viewed the existence of a settled legal principle—standing alone—as dispositive of a government official's immunity defense. The Court instead has looked to both the law and the facts, and asked whether the official reasonably should have known that his conduct was unlawful under the particular circumstances.

Harlow itself provides that a government official is not entitled to immunity from damages liability if the official's conduct "violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known" (457 U.S. at 818). The standard thus turns upon whether, at the time of the events in question, the government official should have known that the challenged conduct violated the plaintiff's "constitutional rights"; it does not depend upon whether the official should have known that his conduct was governed by a particular legal standard. See *id.* at 815 (citation omitted; emphasis in original) (objective component of qualified immunity test is whether "an official '*knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff]' ").[8]

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[8] The *Harlow* Court at one point did characterize the issue as whether the defendant "neither knew nor should have known of the relevant legal standard" (457 U.S. at 819), but the context of that statement indicates that the Court was referring to a situation in which the legal standard sufficed to

Of course, in some circumstances, a settled legal standard might be sufficient by itself to inform an official that his conduct violated the plaintiff's constitutional rights. For example, if this Court had concluded in *Mitchell* that by 1970 the law was clear that warrantless domestic wiretaps for national security purposes violated the Fourth Amendment, former Attorney General Mitchell would not have been entitled to immunity. The legal principle would have established a bright-line rule sufficient to inform government officials that the authorization of such wiretaps violated the Constitution.

In many circumstances, however, the general legal standard governing an official's conduct does not prescribe such a bright-line rule, and therefore would not put a reasonable official on notice that his conduct violated the plaintiff's constitutional rights. Where the application of a general legal principle turns upon the specific facts of each particular case, for example, the line between constitutional conduct and unconstitutional conduct can only be determined by reference to particular cases in which that principle has been applied. Thus, the principle that "probable cause" is necessary to justify a search under the Fourth Amendment undoubtedly is well settled, but that principle by itself plainly would not enable a reasonable law enforcement officer to ascertain

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inform a government official that his particular conduct was unlawful. Thus, following that statement the Court observed that "[w]here an official could be expected to know that *certain conduct* would violate statutory or constitutional rights, he should be made to hesitate." *Ibid.* (emphasis added); see also *id.* at 818. As we discuss below, the Court's subsequent decisions confirm that immunity under the *Harlow* standard does not turn solely upon the existence of a settled legal standard.

whether a particular search is permissible; the legal standard depends for its application upon a myriad of case-specific factors. See pages 26-27, *infra*.

Since a general legal principle of this type, even if it was settled, would not inform a reasonable official whether his particular conduct violated the plaintiff's constitutional rights, the validity of the official's immunity defense instead turns upon whether an official charged with knowledge of the relevant case law should have known that the particular conduct challenged by the plaintiff violated the relevant general legal principle. The official would not be entitled to immunity simply because the general legal principle "ha[d] never explicitly been * * * appl[ied] * * * in identical circumstances. But in cases where there is a legitimate question whether [the official's conduct was prohibited], it cannot be said that [the official] violate[d] clearly established law" (*Mitchell* v. *Forsyth*, slip op. 23 n.12).

The Court followed this approach in assessing the immunity claim in *Davis* v. *Scherer*, 468 U.S. 183 (1984). The question in *Davis* was whether the defendant state officials' failure to provide a state employee with either a formal hearing prior to his discharge or a prompt post-termination hearing violated the employee's clearly established constitutional rights; the Court concluded that the officials were entitled to immunity under *Harlow*.[9] The Court observed that, at the time of the events at issue in *Davis*, its decisions established both that " 'some kind of a hearing' " was required in connection with the discharge of a government employee and that the

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[9] Prior to his discharge, the employee had been provided with several informal opportunities to present his side of the story (468 U.S. at 185-186).

specific requisites of due process depended upon "a careful balancing of the competing interests—of the employee and the state—implicated in the official decision" (468 U.S. at 192 n.10 (citation omitted)). The Court noted, however, that it had not applied these general rules to "specify * * * minimally acceptable procedures for termination of employment" (*ibid.*). For that reason, it was "[not] * * * unreasonable * * * for the [state officials] to conclude that [the employee] had been provided with the fundamentals of due process" (*id.* at 192).

Davis makes clear that the existence of a general legal standard does not automatically defeat an official's immunity defense. The general legal standard imposed by the Due Process Clause was clear at the time of the challenged conduct—some type of hearing was required in connection with the discharge of a government employee, with the specific procedures mandated by the Constitution dependent upon a balancing of the relevant interests. The Court nonetheless concluded that the defendants' immunity defense should be sustained because, in the absence of case law applying these general due process principles in the employee discharge context, state officials had no clear basis for knowing that their actions were unlawful. See also *Davis*, 468 U.S. at 198 (Brennan, J., concurring in part and dissenting in part) (in order to determine whether a government official has violated a plaintiff's clearly established rights it is necessary to determine "whether governing case or statutory law would have given a reasonable official cause to know, at the time of the relevant events, that [the official's] acts or omissions violated the plaintiff's rights").

In its decision last Term in *Malley* v. *Briggs*, *supra*, the Court applied the same rule in a context

very similar to the present case.[10] The plaintiffs in *Malley* claimed that the defendant, a Rhode Island state trooper, violated their Fourth Amendment rights by seeking a warrant for their arrest on the basis of an affidavit that did not establish probable cause. The Court rejected the defendant's claims that he was entitled to absolute immunity for conduct connected with obtaining the warrant, but reaffirmed that a law enforcement officer is entitled to immunity under *Harlow* "if [he] acted in an objectively reasonable manner" (*Malley*, slip op. 5).

In contrast to the court of appeals' decision in the present case, this Court in *Malley* made clear that an officer's immunity turns not upon whether his conduct was governed by a settled legal principle, but rather upon whether he should have known that his particular conduct violated the Constitution. It stated that a police officer is immune from damages liability unless "a reasonably well-trained officer in [the defendant's] position would have known that his affidavit failed to establish probable cause and that he should not have applied for [a] warrant" (slip op. 9).[11]

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[10] *Malley* was an action against state officials, but the Court recognized in its decision in that case that "it is ' "untenable to draw a distinction for purposes of immunity law between suits brought against state officials under § 1983 and suits brought directly under the Constitution against federal officials" ' " (slip op. 4 n.2 (citations omitted)).

[11] In remanding the case for further proceedings, the Court in *Malley* expressly held that "whether [the officer's] conduct *in this case* was in fact objectively reasonable * * * must be resolved on remand" (slip op. 9 n.8 (emphasis added)). The Court also stated that an officer seeking a warrant "will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant

The Court in *Malley* also observed that "the same standard of objective reasonableness that [the Court] applied in the context of a suppression hearing in [*United States* v. *Leon*, 468 U.S. 897 (1984)] defines the qualified immunity accorded an officer whose request for a warrant allegedly caused an unconstitutional arrest" (*Malley*, slip op. 8 (footnote omitted)). The Court held in *Leon* that the Fourth Amendment exclusionary rule should not be applied to suppress probative evidence if the law enforcement officer's actions in obtaining the evidence were objectively reasonable in view of the facts of the particular case. 468 U.S. at 923 (describing general legal standard); see also *id.* at 926 (holding that police officer's conduct was objectively reasonable in that case). The Court thus made clear that analysis based upon the particular facts of each individual case is required in order to determine whether qualified immunity is to be denied because the official should have known that his conduct violated the Constitution.[12]

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should issue; but if officers of reasonable competence could disagree on this issue, immunity should be recognized" (*id.* at 5).

[12] Respondents appear to argue (Br. in Opp. 9-11) that the rule discussed in *Malley* is limited to situations in which an officer acts in reliance upon a warrant. However, nothing in *Malley* indicates that this is so and both this Court and the courts of appeals have applied the identical principle in connection with alleged violations of constitutional rights removed from the warrant setting. Indeed, the Court observed in *Mitchell* that the same rule applies to warrantless searches. It stated that although "an official is [not] always immune from liability or suit * * * merely because the warrant requirement has never explicitly been held to apply to a search conducted in identical circumstances," an official's immunity should be upheld where "there is a legitimate question whether

The courts of appeals generally have recognized that the qualified immunity standard turns upon whether the particular plaintiff's constitutional rights were clear under existing law, not upon whether the relevant legal standard was settled. Thus, following this Court's decision in *Bivens* v. *Six Unknown Named Agents*, *supra*, the Second Circuit held on remand that a police officer could avoid liability in damages without "prov[ing] probable cause in the constitutional sense." *Bivens* v. *Six Unknown Named Agents*, 456 F.2d 1339, 1348 (2d Cir. 1972). The officer only was required to show "that he believed, in good faith, that his conduct was lawful, [and] that his belief was reasonable" (*ibid.*; see also *id.* at 1348-1349 (Lumbard, J., concurring)). Other courts have reached the same conclusion. See *Floyd* v. *Farrell*, 765 F.2d 1, 5 (1st Cir. 1985) (holding that a police officer is entitled to immunity for a warrantless arrest "so long as the presence of probable cause is at least arguable"; the appropriate inquiry is

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an exception to the warrant requirement exists, [because] it cannot be said that a warrantless search [in those circumstances] violates clearly established law" (slip op. 23 n.12).

Moreover, contrary to respondents' suggestion (Br. in Opp. 10), a decision in favor of petitioner in this case would not automatically expand the good faith exception to the exclusionary rule. The qualified immunity standard announced in *Harlow* and the good faith exception to the exclusionary rule recognized in *Leon* rest upon similar principles concerning the deterrence of unconstitutional conduct. Compare 457 U.S. at 819 with 468 U.S. at 918-920. But the Court in *Leon* based its decision upon the "evaluation of the costs and benefits" of the application of the exclusionary rule (468 U.S. at 913). An assessment of all the factors considered in *Leon*—some of which are not implicated in the immunity context—would be appropriate in order to determine the scope of the good faith exception.

"whether another officer, standing in [the defendant's] shoes and having the same information [the defendant] had, would reasonably have come to the conclusion that he had probable cause to arrest [the suspect]"); *Hobson* v. *Wilson*, 737 F.2d 1, 26 (D.C. Cir. 1984), cert. denied, No. 84-1139 (Mar. 25, 1985) (recognizing that an interpretation of *Harlow* requiring only that broad legal principles be clearly established "would, of course, undermine the premise of qualified immunity that the Government actors reasonably should know *their* conduct is problematic") (emphasis in original).[13]

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[13] See also, *e.g.*, *LeSavage* v. *White*, 755 F.2d 814, 821 (11th Cir. 1985) ("The question of qualified immunity under *Harlow* is one of reasonableness—would a reasonable person in [the defendant's] shoes have known he was violating [the plaintiff's] constitutional rights?"); *Zook* v. *Brown*, 748 F.2d 1161, 1165 (7th Cir. 1984) (defendants entitled to qualified immunity in connection with disciplining of a public officer for endorsing a local ambulance service since the application of the First Amendment to the particular facts of the case was not clear); *Evers* v. *County of Custer*, 745 F.2d 1197, 1203 (9th Cir. 1984) (individual defendants entitled to qualified immunity for declaring that certain property claimed by a private party was a public road, because it was not clear that due process required notice and a hearing prior to the issuance of the declaration); *Bilbrey* v. *Brown*, 738 F.2d 1462, 1466-1467 (9th Cir. 1984) (school officials' qualified immunity not defeated by fact that settled legal principle governed their conduct); *Bailey* v. *Turner*, 736 F.2d 963, 969-972 (4th Cir. 1984) (prison guard entitled to a jury instruction on qualified immunity in connection with his use of mace on a prisoner because no per se rule forbade use of mace).

Some courts of appeals have agreed with the court below that the existence of a settled legal standard is sufficient to deprive a government official of his immunity defense. See *Bass* v. *Wallenstein*, 769 F.2d 1173, 1186 (7th Cir. 1985) (holding that the defendants were not entitled to immunity be-

2. The Court has observed that "one policy consideration seems to pervade the analysis [relating to official immunity]: the public interest requires decisions and action to enforce laws for the protection of the public." *Scheuer* v. *Rhodes*, 416 U.S. 232, 241 (1974). Thus, "[i]mplicit in the idea that officials have some immunity—absolute or qualified—for their acts, is a recognition that they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error and possible injury from such error than not to decide or act at all." *Id.* at 242; see also *Butz* v. *Economou*, 438 U.S. 478, 506-507 (1978); *Procunier* v. *Navarette*, 434 U.S. 555, 562 (1978); *Wood* v. *Strickland*, 420 U.S. 308, 319, 321 (1975). The Court accordingly has concluded that executive officials are entitled to immunity in situations in which the threat of liability might cause such officials to "exercise their discretion with undue timidity" (*Wood* v. *Strickland*, 420 U.S. at 321). Indeed, "[a]s the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law" (*Malley*, slip op. 5).

A government official may be held liable in damages when he reasonably "could be expected to know that certain conduct would violate statutory or con-

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cause the Eighth Amendment standard of "deliberate indifference to inmates' serious medical needs" was clearly established at the pertinent time); *Fujiwara* v. *Clark*, 703 F.2d 357, 361 (9th Cir. 1983) (denying qualified immunity because "[t]he law governing the conduct of [the defendants] was then clearly established"); *Trejo* v. *Perez*, 693 F.2d 482, 488 n.10 (5th Cir. 1982) ("[t]he Fourth Amendment rule on warrantless arrests *is* 'clearly established law.' If an arrest lacks probable cause for its support, it is, objectively speaking, in violation of clearly established law") (emphasis in original).

stitutional rights" because an official who acts unlawfully in that situation "should be made to hesitate" (*Harlow*, 457 U.S. at 819 (footnote omitted)). Since the official should have known that his actions were unlawful, and therefore could have conformed his conduct to the mandate of the Constitution, he may be required to answer in damages for any injury flowing from his unlawful actions.

If, on the other hand, "an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken 'with independence and without fear of consequences' " (*Harlow*, 457 U.S. at 819, quoting *Pierson* v. *Ray*, 386 U.S. 547, 554 (1967)). In this circumstance, the official "could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful" (*Harlow*, 457 U.S. at 818). The official could avoid committing a constitutional violation only by failing to take any action at all or by exercising his authority in an overly cautious manner, and the threat of monetary liability most likely would encourage such timid conduct. As the Court has recognized, "[t]he imposition of monetary costs for mistakes which were not unreasonable in the light of all the circumstances would undoubtedly deter even the most conscientious [government official] from exercising his judgment independently, forcefully, and in a manner best serving the [public] interest" (*Wood* v. *Strickland*, 420 U.S. at 319-320).

A rule that deprived a government official of immunity whenever the legal principle governing the official's conduct was clearly established—even if that principle did not by itself contain guidance sufficient

to enable the official to conform his conduct to constitutional requirements—plainly would not provide the protection from unforeseen monetary liability needed to ensure that officials are not deterred from properly exercising their authority. An official could be subjected to monetary liability even if the relevant legal principle, and the case law applying that principle, did not provide any indication that the official's conduct was unlawful. Such an immunity rule therefore would "contribute not to principled and fearless decision-making but to intimidation" (*Pierson* v. *Ray*, 386 U.S. at 554)—the very result that qualified immunity always has been designed to prevent. See *Harlow*, 457 U.S. at 818-819; *Procunier* v. *Navarette*, 434 U.S. at 562; *Wood* v. *Strickland*, 420 U.S. at 319-320.

B. The Rule Adopted By The Court Of Appeals Would Subject Law Enforcement Officers To Damages Liability In The Situations Where Immunity Is Most Appropriate

The rule adopted by the court of appeals nullifies the immunity defense in the situations that will most frequently arise and in which the defense is most necessary—when the propriety of a law enforcement officer's action is governed by a settled legal principle, but the application of that principle is not clear in the particular factual context confronting the officer. Many of the decisions that a police officer must make on a daily basis, such as whether he may stop and question a suspect, whether he has probable cause to effect an arrest, whether he may conduct a search, whether the action that he contemplates amounts to a search or a seizure, and whether exigent circumstances justify immediate warrantless action, turn upon the application of settled, extremely general,

Fourth Amendment principles to the particular facts of each individual situation.[14] As the Court has observed in the context of investigative detention, "[m]uch as a 'bright line' rule would be desirable, * * * common sense and ordinary human experience must govern over rigid criteria." *United States* v. *Sharpe*, No. 83-529 (Mar. 20, 1985), slip op. 10.

For example, the general definition of the probable cause needed to justify an arrest is "whether at that moment the facts and circumstances within [the officer's] knowledge and of which [he] had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." *Beck* v. *Ohio*, 379 U.S. 89, 91 (1964); see also *Draper* v. *United States*, 358 U.S. 307, 313 (1959). Thus, "probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Illinois* v. *Gates*, 462 U.S. 213, 232 (1983); see also 1 W. LaFave, *Search and Seizure* § 3.2, at 449 (1978) (citation and footnote omitted) ("[n]otwithstanding the frequency with which police, lawyers and judges must decide whether a given set of facts amounts to probable cause, it

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[14] An investigative stop must be justified by reasonable suspicion (*Terry* v. *Ohio*, 392 U.S. 1, 20-27 (1968)), and its duration is subject to a reasonableness standard (*United States* v. *Sharpe*, No. 83-529 (Mar. 20, 1985)); a search occurs "when an expectation of privacy that society is prepared to consider reasonable is infringed" and a seizure is "some meaningful interference with an individual's possessory interests in that property" (*United States* v. *Jacobsen*, 466 U.S. 109, 113 (1984) (footnotes omitted)). The standards relating to probable cause and warrantless action are discussed in the text below.

remains 'an exceedingly difficult concept to objectify' ").

The "exigent circumstances" that will justify a warrantless entry into an individual's home in order to arrest a suspect similarly cannot neatly be described in a detailed legal standard. In order to determine whether exigent circumstances permitted an officer's actions in a particular situation it is necessary to assess the facts as they reasonably appeared to the officer at the time he effected the arrest. *United States* v. *Santana*, 427 U.S. 38, 42-43 (1976); *Warden* v. *Hayden*, 387 U.S. 294, 298-300 (1967); see generally *Welsh* v. *Wisconsin*, 466 U.S. 740 (1984). Thus, the Court concluded in both *Santana* and *Hayden* that the officer's immediate entry was justified under the circumstances of each case, but did not establish a set of detailed rules for ascertaining the presence of exigent circumstances. 427 U.S. at 42-43; 387 U.S. at 298-299. The lower courts also have concluded that a bright-line standard cannot be used in making this determination; indeed, they have developed somewhat differing approaches for determining whether an officer's warrantless entry complied with the Fourth Amendment.[15]

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[15] Several courts, including the Eighth Circuit, have followed the approach first set forth in *Dorman* v. *United States*, 435 F.2d 385 (D.C. Cir. 1970) (en banc), "a leading federal case defining exigent circumstances" (*Welsh*, 466 U.S. at 751), which identified six factors to be considered in making this determination. See, *e.g.*, *United States* v. *Baldacchino*, 762 F.2d 170, 176-177 (1st Cir. 1985); *United States* v. *Martinez-Gonzalez*, 686 F.2d 93, 100-102 (2d Cir. 1982); *United States* v. *Kulcsar*, 586 F.2d 1283, 1287 (8th Cir. 1978); *United States* v. *Shye*, 492 F.2d 886, 891-892 (6th Cir. 1974); *Vance* v. *North Carolina*, 432 F.2d 984, 990-991 (4th Cir. 1970). Other courts have cautioned against adopting a " 'checklist-

Law enforcement officers "often operate 'in the midst and haste of a criminal investigation' " (*Malley* v. *Briggs*, slip op. 5 (Powell, J., concurring in part and dissenting in part) (citation omitted)), and frequently are called upon to make instantaneous decisions in "rapidly unfolding and often dangerous situations on city streets." *Terry* v. *Ohio*, 392 U.S. 1, 10 (1968)). In view of the general nature of the governing legal principles, it is inevitable that police officers operating under short deadlines in the pressurized atmosphere of an ongoing investigation will take actions that subsequently will be found to violate the Fourth Amendment. See *Stone* v. *Powell*, 428 U.S. 465, 539 (1976) (White, J., dissenting) ("experience tells us that there will be those occasions where the trial or appellate court will disagree on the issue of probable cause, no matter how reasonable the grounds for arrest appeared to the officer and though reasonable men could easily differ on the question"); *Bivens* v. *Six Unknown Named Agents*, 403 U.S. at 418 (Bur-

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type [of] analysis,' " but have recognized that a bright-line rule is not possible. *Llaguno* v. *Mingey*, 763 F.2d 1560, 1564 (7th Cir. 1985) (en banc) (citation omitted); see also *ibid.* ("The operative word in the Fourth Amendment is 'unreasonable'; so the question ought to be, were the police unreasonable in not getting a warrant in the circumstances that confronted them?"); compare LaFave, *"Seizures" Typology: Classifying Detentions of the Person to Resolve Warrant, Grounds, and Search Issues*, 17 U. Mich. J.L. Ref. 417, 454-458 (1984) (proposing a standard that varies based upon whether the arrest was "planned"). In still other situations, the courts have looked to the facts of the case at hand to determine whether a warrantless entry was "imperative." *United States* v. *Manfredi*, 722 F.2d 519, 522 (9th Cir. 1983); *United States* v. *Hultgren*, 713 F.2d 79 (5th Cir. 1983); *United States* v. *Titus*, 445 F.2d 577, 578-579 (2d Cir.), cert. denied, 404 U.S. 957 (1971).

ger, C.J., dissenting) ("[i]nadvertent errors of judgment" and "honest mistakes" will "inevitably occur given the pressures inherent in police work having to do with serious crimes"). Indeed, the application of these legal standards often involves "grey, twilight area[s], where the law is difficult for the courts to apply, let alone for the policeman on the beat to understand." *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 269 (1973) (Powell, J., concurring).

The rule adopted by the court below would divest law enforcement officers of their immunity from damages liability in almost every lawsuit in which a plaintiff sought damages for a violation of the Fourth Amendment. An officer would be held to a standard of perfection; if he incorrectly predicted the manner in which the court later resolved some complex Fourth Amendment question, he would be subject to monetary liability on the ground that the general legal principle governing that question was clearly established. That result would put the officer in the "unhappy" dilemma of "choos[ing] between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does" (*Pierson*, 386 U.S. at 555). Rather than interpreting *Harlow* to eliminate virtually all immunity from damages liability for the Nation's law enforcement officers, this Court should reaffirm that an officer is entitled to the same "ample room for mistaken judgments" available to other government officials (*Malley*, slip op. 7). An officer therefore should be immune from damages liability unless he should have known at the time that he acted that his particular conduct violated the plaintiff's constitutional rights.

C. This Case Should Be Remanded To Allow The Courts Below To Apply The Correct Immunity Standard

The court of appeals' rejection of petitioner's immunity defense rested upon that court's determination that the existence of a clearly established legal standard is sufficient to subject a government official to damages liability (see Pet. App. 16a). However, as we have discussed, these general legal principles could not by themselves inform petitioner that his conduct violated the Constitution. The court of appeals simply failed to consider whether, in light of the facts known to petitioner and the case law defining probable cause and exigent circumstances, petitioner could reasonably have believed that his warrantless entry into respondents' home was legally justified. This Court accordingly should remand the case for reconsideration of petitioner's immunity defense under the correct legal standard. See *Malley*, slip op. 9 n.8; *Harlow* v. *Fitzgerald*, 457 U.S. at 819-820.[16]

Respondents may argue that a remand is unnecessary because the facts in the record are sufficient to

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[16] Respondents imply (Br. in Opp. 4-6) that petitioner is not entitled to qualified immunity because he did not consciously rely upon the exigent circumstances exception to the warrant requirement at the time that he entered respondents' home. This Court concluded in *Harlow*, however, that a government official's subjective intent is irrelevant in determining whether the official is entitled to immunity from damages liability. See 457 U.S. at 816-819; see also *United States* v. *Leon*, 468 U.S. at 922-923 n.23. Indeed, the validity of an officer's conduct under the Fourth Amendment turns solely upon the facts known to the officer. The officer's own view regarding the constitutionality of his conduct is irrelevant. 1 W. LaFave, *supra*, § 3.2(b), at 459-461. The same rule applies in assessing the officer's entitlement to immunity.

defeat petitioner's immunity defense. This Court should reject any such suggestion for two reasons. First, the merits of petitioner's immunity defense have not been fully considered by either of the courts below, and we submit that it would be premature for this Court to decide that issue now. Second, the relevant facts demonstrate that petitioner most likely *is* entitled to immunity from damages liability for his conduct on November 11, 1983.

The district court found it unnecessary to address petitioner's immunity claim because it ruled in favor of petitioner on the merits, holding that petitioner's conduct did not violate the Fourth Amendment (Pet. App. 25a & n.5). That determination obviously is entitled to substantial weight in assessing petitioner's immunity defense. Indeed, in view of the district court's conclusion that petitioner's conduct did not violate the Fourth Amendment, petitioner almost certainly could reasonably have believed that he had conformed to the relevant Fourth Amendment requirements. Cf. *Malley*, slip op. 5-6 (Powell, J., concurring in part and dissenting in part) (magistrate's finding of probable cause is entitled to special weight in assessing reasonableness of officer's conduct).

The district court first found that petitioner had probable cause to believe that Vadaain Dixon was responsible for the bank robbery. Dixon had a history of armed robbery and recently had pleaded guilty to several bank robberies, he fit the bank tellers' description of the robber, and two tellers had positively identified him from a photo display. Pet. App. 23a. This aspect of the district court's decision was not questioned by the court of appeals.

Second, the district court concluded that petitioner had probable cause to believe that Vadaain Dixon was

at respondents' home. Petitioner had been told by Vadaain Dixon's probation officer that Dixon and his wife Cheryl both had admitted that she was living at respondents' home. Furthermore, the description of the getaway car, even if not precisely identical to respondents' car, was a legitimate factor for petitioner to consider. Pet. App. 23a.

Finally, relying on the factors previously applied by the Eighth Circuit in *United States* v. *Kulcsar*, 586 F.2d 1283, 1287 (1978), the district court ruled that exigent circumstances justified petitioner's warrantless entry into respondents' home. The court cited—among other factors—the seriousness of the offense, the known dangerousness of Vadaain Dixon, and the likelihood that Dixon would escape if he was not quickly apprehended. Pet. App. 24a.

In view of the district court's detailed findings, it cannot be said that petitioner's immunity defense is insufficient as a matter of law. Even the court of appeals did not conclude that the facts relied upon by petitioner were insufficient to establish probable cause and exigent circumstances; it instead rested its decision principally on the conclusion that the relevant facts were in dispute (Pet. App. 8a-9a, 10a, 12a, 15a).[17] The court of appeals' conclusion that the

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[17] The court of appeals' finding that relevant facts were in dispute rested primarily upon the court's consideration of facts not known to petitioner. For example, the court cited newspaper reports and an alleged conversation between a police officer and one of respondents' neighbors in finding a factual dispute regarding the description of the getaway car (Pet. App. 9a-10a), and it relied upon facts in respondents' affidavits to find a dispute regarding Cheryl Dixon's residence (*id.* at 11a). It is well settled, however, that the existence of probable cause turns solely on the facts reasonably believed by an officer at the time of the arrest, even if those facts may turn out in part to be incorrect. See, *e.g.*, *Illinois* v. *Gates*, 462

substantive legality of petitioner's conduct was sufficiently unclear to warrant submission of the issue to a jury makes it quite unlikely that an officer in petitioner's position should have known that he was violating the Fourth Amendemnt.

Respondents assert (Br. in Opp. 15) that the factual disputes cited by the court of appeals require the affirmance of the judgment below. But the court of appeals did not simply conclude that the district court erred in granting summary judgment; it held that petitioner was not entitled to immunity from monetary liability (Pet. App. 16a-17a). If facts relevant to the merits of the immunity issue were in dispute, the court of appeals should have vacated the district court's judgment and remanded the action for further proceedings. The supposed existence of a factual dispute therefore cannot justify the court of appeals' elimination of petitioner's immunity defense.[18]

U.S. at 231-235, 245 n.14; *Michigan* v. *DeFillippo*, 443 U.S. 31, 36 (1979); *Franks* v. *Delaware*, 438 U.S. 154, 165 (1978); *Hill* v. *California*, 401 U.S. 797, 803-804 (1971); 1 W. LaFave, *supra*, § 3.2, at 466. Therefore, as the district court correctly observed (Pet. App. 25a n.5), these facts are not relevant to the merits of the Fourth Amendment issue.

Respondents may believe that the facts cited by the court of appeals are relevant because they cast doubt on the credibility of petitioner's recitation of the facts that he knew at the time of the events in question. Assuming that such an interpretation of this information is conceivable, it might be found to provide grounds for respondents to obtain discovery relating to the scope of petitioner's knowledge (see note 18, *infra*). The extraneous facts themselves could be relevant in evaluating the constitutionality of petitioner's conduct only to the extent they are found to be probative of petitioner's knowledge.

[18] Respondents also claim (Br. in Opp. 12-14) that they were entitled to discovery prior to the resolution of the immunity

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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issue. The general rule, of course, is that "discovery should not be allowed" prior to a determination regarding the defendant's immunity (*Harlow*, 457 U.S. at 818). That rule plainly is appropriate when immunity turns solely on a legal question, such as whether a particular legal rule was clearly established at the time of the conduct in question. Where, as here, the defendant's immunity depends upon case-specific facts such as the information known to the defendant, a limited amount of discovery may be appropriate. Any such discovery must, of course, be tightly restricted to prevent the erosion of the protections of immunity. See *Harlow*, 457 U.S. at 819-820 n.35 (maintenance of "[i]nsubstantial lawsuits undermine[s] the effectiveness of government as contemplated by our constitutional structure"); see also *id.* at 814, 816. Respondents will be free to argue on remand that they are entitled to discovery in the present case.

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